Anne Cole, vid. and *Harry Cole* Esq; } Appellants.

Mercy Godfrey Spinster, Executrix of *William Godfrey*, Executor of *Henry*, Deceas'd. } Respondent.

The Respondents CASE.

HENRY GODFREY Deceas'd, Lent to the Appellant *Anne Cole*, at several times, in the Years 1691, 92, 93, 94. 1200 *l.* and upwards, and afterwards with much Solicitations, he Received part of such Monies. And in the Year 1699, the said *Henry Godfrey* drew up a just Accouut of what Monies he had Lent the *Appellant Anne*, and likewise what Monies he had Received of her back in part thereof, and how much remained then Due to him, for the Principal and Interest of such Monies; and sent such account to the *Appellant Anne*, who received the same, and made no Objections thereunto, on which Account so made up and delivered by the said *Henry Godfrey* in his Life time, there remained due unto him 350 *l.*

The Appellant *Anne* having received such Account from the Testator *Henry Godfrey*, writes a Letter to him, and therein acquaints him that she had received such Account, and says, that she had not then Monies in her Hands to Pay the same, but had wrot to her Son the other *Appellant*, who had twice as much of her Monies in his Hands, as would Pay the Testator his Debt, and desired the Testator to send to her Son for the same.

The Testator *Henry Godfrey* having received such Letter from the Appellant *Anne Cole*, sends to the other Apellant *Harry Cole* for such Monies, and *Harry Cole* then writes the *Testator* an Account, and sends it by his own Servant, that if 40 or 50 *l.* would do him any kindness, he would send him the same.

The Testator *Henry Godfrey* receiving such Letter, did not think fit to Receive such Monies, but insisted to have the whole Sum of 350 *l.* Paid in together.

Soon after, to wit in the Year 1700. *Henry Godfrey* dies, before he had Received any part of such Monies, having first made his Last Will and Testament. And thereof made *William Godfrey* his Brother, sole Executor, who soon after proves such Will in due form, and takes upon him the Burthen and Execution thereof; having so done, endeavours to get the *Appellants* to Pay him such Monies, Due on such Account, which they often Promissed to do, by Letters and otherwise under their Hands. And especially the Apellant *Harry Cole* in *October*, 1703. Promissed by his Letter, that as soon as his Servant *Rogers* return'd from *London*, which he expected on the then next *Saturday*, he would ascertain the Accouut, of what was Due to *William Godfrey*, as Executor to *Henry Godfrey*, and secure the Ballance thereof to him. But the *Appellants* failing in performing of their several Promisses, the Testator *William Godfrey* in *Hillary* Term, 1703. exhibetted his Bill, as Executor to *Henry Godfrey* Deceas'd, to bring the *Appellants* to a just Account with him for such Monies, so Raised and Lent by the Testator *Henry Godfrey* to the Appellant *Anne*. And in such Bill sets forth how the Appellant *Anne*, made over all her Joynture of 500 *l. per Ann.* and Housholl Goods to the Value of 1200 *l.* to the Appellant *Harry Cole*, to Pay her just Debts; to which the *Appellants* put in their Answer, and denies any such Assignment or Sale of Goods; but *Henry Godfrey* having drawn such Assignment, had the Original Draught in his Hands, which is since come to the Hands of the *Respondent*. And likewise the *Respondent* has proved by *Harry Coles* Servant, that upon the Appellant *Harry Coles* Marriage, the Appellant *Anne* had only an Annuity of 200 *l. per Ann.* Settled upon her for her Life.

Having so done, this Cause came to be heard before his Honour the *Master of the Rolls*, the 31 of *May*, 1704. *ex parte*, altho they had Notice of the same, at which time his Honour Ordered and Decreed, the *Appellants* to account with the *Respondents* Testator *William Godfrey*, in such Manner as by the Appeal is set forth; unless the *Appellant* upon serving a Sub-pna, shewed Cause to the contrary, upon the service of the Sub-pna. The *Appellants* afterwards procured an Order to have the Cause reheard, and accordingly the same was reheard the 7th of *March* then following, at which time the former Decree to the Account was Confirmed, and only Costs reserv'd till the Master had made his Report.

On which last Decretall Order the Master to whom it was referred to take the Account, was attended on both sides several times, and the 15th of *November* following he makes his Report, and Reported 459 *l.* then Due from the *Appellants* to the now *Respondent* Testator as Executor of *Henry Godfrey* Deceas'd. Upon this Report the *Appellant* upon a pretente of a Surprize, procured an Order from the Master to review his Report; and upon several attendances on the Master, afterwards on the 17th of *December* then following, the Master made his second Report, and then Reported 414 *l.* 5 *s.* 2 *d.* Due to the now *Respondents* Testator *William Godfrey*, as Executor of *Henry Godfrey*.

The 20th of *December* then following, the then *Respondent* moved the Court to Confirm the Report, and obtained an Order to Confirm the same, unless the *Appellants* shewed Cause to the contrary, the first day of the then next Term.

The *Appellants* being served with such Order, filed Exceptions to the Masters Report, and shewed that for Cause, and thereby stayed the Report from being Confirmed at that time.

In *Hillary* Term 1705. the *Respondents* Testator procured the Exceptions to be set down, to be Argued before My *Lord Keeper*. And in the Vacation following, and before the Exceptions came on to be Argued, to wit the 29th of *March* following, the now *Respondents* Testator dyed, having first made his Last Will and Testament in Writing, and therein and thereby, made the now *Respondent* his Executrix, who soon after proved such Will in due form of Law, and took upon her the Burthen and Execution thereof. And in *Easter* Term last fyled her Bill of Revivor, and served the *Appellants* with Process of Sub-pna ad Revivend, and the *Appellants* being served therewith appeared to the same, and in *Trinity* Term last the *Respondent* obtained an Order to revive the former Proceedings.

And having revived the same, the *Respondent* the 17th of *October* last, procured an Order to bring on the *Appellants* Exceptions to the Masters Report, and got the Exceptions set down to be Argued, and the 13th of *December* last the Exceptions came on to be Argued, and were all of them on hearing of Counsel on both sides, Over-ruled and the Masters Report Confirmed.

The 21st of *December* last, the *Respondent* procured an Order to have her Costs Taxed, but before the same was Taxed, the *Appellants* brought an Appeal, and procured an Order to have the Cause reheard before the *Lord Keeper*, and the 29th of *January* last the Cause coming to be reheard, the Order of the 24th of *December* last, made for the rehearing thereof, was absolutely Discharged, and the former Decrees and the Proceedings thereon Confirmed. And then after all these delatory Proceedings, the *Appellants* have brought this Appeal to tire out the *Respondents*, with the Expences thereof, without any Ground and Foundation for the same; which the *Respondent* Humbly Hopes, shall be dismissed with Exemplary Cost.

It is not mentioned in the Minutes taken upon the Rehearing, that the Bill and Answer were opened. When the Councel on either side open the Proofs that are made, and what can *Viva vôce* be proved, where there is an Order for that purpose (as in this Case there is) and do agree the Evidence is as opened, the Court thereupon grounds their Decree; and in the Order it is only mentioned, upon debate of the matter, and hearing what could be alledged on either side, as in this Case it is. The Appeal was heard on *Thursday* the 27th of *February* last, and since upon the *Appellants* Petition, is ordered to be Reheard.

William Bamastre.
Daniel Tainturier.

March the 8th, 1706.